



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 4538-00
7 November 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LTCO [REDACTED], USMC, [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 21 Jun 00 w/attachments
(2) BCNR file for Subject's prior case (5721-99)
(3) HQMC MMOA-4 memo dtd 11 Oct 00
(4) HQMC MMPR memo dtd 2 Oct 00
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show the lineal position, date of rank, and effective date in the grade of lieutenant colonel he would have been assigned had he been selected for promotion to that grade by the Fiscal Year (FY) 2000 Lieutenant Colonel Selection Board, vice the FY 2001 Lieutenant Colonel Selection Board.

2. The Board, consisting of Messrs. McPartlin, Neuschafer, and Pfeiffer reviewed Petitioner's allegations of error and injustice on 1 November 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (2) reflects that in Petitioner's prior case before this Board, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) directed removing his fitness report for 9 July to 31 October 1988; and this Board removed his failure by the FY 2000 Lieutenant Colonel Selection Board. He did not apply for correction of his record until 28 May 1999, but his application stated that he did not discover the injustice until 17 May 1999.

c. In correspondence attached as enclosure (3), the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), the office with cognizance over the subject matter of this case, has commented to the effect that Petitioner's request has merit and warrants favorable action.

d. In correspondence attached as enclosure (4), the HQMC Promotion Branch (MMPR) recommended denial on the grounds that Petitioner caused his own failure of selection by not having acted earlier to have his fitness report record corrected. They stated that he would have received the date of rank and effective date of 1 August 1999, had he been promoted pursuant to selection by the FY 2000 Lieutenant Colonel Selection Board. His current lieutenant colonel date of rank and effective date is 1 June 2000.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the requested relief.

The Board concurs with the MMOA-4 advisory opinion at enclosure (3) in finding that Petitioner's request has merit and warrants favorable action. In light of the information provided by MMPR at enclosure (4), they find the date to which his date of rank and effective date should be adjusted is 1 August 1999. Contrary to the MMPR opinion, they find his not having acted sooner to pursue correcting his fitness report record is an insufficient basis to deny his otherwise meritorious request, particularly considering the date he says he discovered the injustice in his case.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

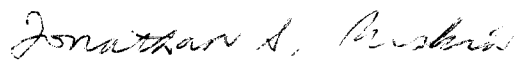
a. That Petitioner's naval record be corrected, where appropriate, to show his date of rank and effective date in the grade of lieutenant colonel as 1 August 1999, rather than 1 June 2000; and that his lineal precedence be adjusted accordingly.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.


c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

4528 CC

IN REPLY REFER TO:

1600
MMOA-4
11 Oct 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR LIEUTENANT COLONEL [REDACTED]
[REDACTED] USMC

Ref: (a) MMR Request for Advisory Opinion in the case of
Lieutenant Colonel [REDACTED] USMC
of 21 Sep 00

1. Recommend approval of Lieutenant Colonel [REDACTED] request for backdating his date of rank.
2. Per the reference, we reviewed Lieutenant Colonel [REDACTED] record. He successfully petitioned the Performance Evaluation Review Board for removal of the Annual fitness report of 880709 to 881031 and the Board for Correction of Naval Records for removal of his failure of selection. Subsequently, he was selected for promotion by the FY01 USMC Lieutenant Colonel Selection Board. Lieutenant Colonel [REDACTED] requests backdating of his date of rank.
3. In our opinion, Lieutenant Colonel [REDACTED] should be afforded the benefit of the doubt and have his date of rank backdated.
4. POC is [REDACTED] at [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Lieutenant Colonel, U.S. Marine Corps
Officer Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

475748 CT
IN REPLY REFER TO:
141272
MMPR
2 OCT 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF LIEUTENANT [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Route Sheet of 21 Sep 00
(b) SECNAVINST 1401.1B

1. Reference (a) requested an advisory opinion in the case of Lieutenant Colonel [REDACTED] Lieutenant Colonel [REDACTED] is requesting an adjustment to his date of rank, effective date of promotion, and lineal precedence as a lieutenant colonel to where he would have been placed, had he been selected by the FY00 USMC Lieutenant Colonel Promotion Selection Board.

2. The following facts are germane to this case:

a. Lieutenant Colonel [REDACTED] was considered and selected as an in zone officer on the FY01 USMC Lieutenant Colonel Promotion Selection Board. He was promoted with a date of rank of 000601.

b. Lieutenant Colonel [REDACTED] had been considered and not selected as an in zone officer on the FY00 USMC Lieutenant Colonel Promotion Selection Board.

c. The FY00 failure of selection was removed by BCNR on 990930. The grounds for removing the failure of selection was the removal of his fitness report 880709 to 881031 on 990901 after failing of selection.

d. Lieutenant Colonel [REDACTED] caused his own nonselection by taking no action to correct a fitness report that was in error for over ten years.

3. Since Lieutenant Colonel [REDACTED] nonselection was due to his inaction, Promotion Branch recommends disapproving his request to grant him a date of rank of 990801 and a lineal control number of 02904500.

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Subj: BCNR APPLICATION IN THE CASE OF LIEUTENANT COLONEL [REDACTED]
[REDACTED] USMC

4. The point of contact in this matter is Capt [REDACTED]
[REDACTED]

[REDACTED]

Officer Promotion Section